

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

ISLAND OF HAWAII

Consent to Assignment, Mortgage, and Amendment Extending Lease Term, for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee, Kealahou, North Kona, Island of Hawaii, Tax Map Key (3) 7-4-008-040.

APPLICANT AND REQUEST:

Kona Fuel & Marine, Inc., ("Kona Fuel") as Assignor, to Kona Marine Holdings, LLC, a Delaware limited liability company authorized to do business in Hawaii, whose business and mailing address is 111 East De La Guerra Street, Presidio Building, Santa Barbara, CA 93101, as Assignee.

Consent to Mortgage from First State Bancshares, Inc., Mortgagee, to the Assignee, as Mortgagor, in an amount not to exceed \$2,000,000.00 (which is equal to a portion of the outstanding mortgage debt plus sums to be used to pay the cost of proposed improvements).

For Assignee/Mortgagor to qualify for this mortgage, the Mortgagee requests a twenty (20)-year extension of the original Harbor Lease No. H-83-2 term of 35 years, for an aggregate term of 55 years from the original commencement date of November 27, 1984. If approved, the amended lease would expire on November 26, 2039.

Boating staff are in the process of preparing a Notice of Default to be served on Kona Fuel for lease rent owed in the amount of \$ 35,696.31. As this is an assignment of lease in lieu of foreclosure due to the financial difficulties of Kona Fuel, the Assignee/Mortgagor requested a waiver of the rent owed. The Assignee/Mortgagor has been informed that it would be responsible for curing Kona Fuel's default of all unpaid upon the assignment of lease. The Board of Land and Natural Resources is not authorized or empowered to waive any past due rents. Therefore, all defaults under the lease will need to be cured before the Department of Land and Natural Resources will deliver for recordation the executed Consent to Mortgage, Consent to the Assignment, and the Amendment of Lease Extension.

LEGAL REFERENCES:

Sections 171-36(a)(5) and 171-36(b)(3), Hawaii Revised Statutes, as amended, permit the Board to approve the assignment and term extension, respectively. Section 171-22 permits the Chairperson to approve a consent to the mortgage.

LOCATION AND AREA:

Portion of Government lands of Kealahou situated at Kealahou, North Kona, Island of Hawaii, identified by Tax Map Key: (3) 7-4-008-040, consisting, in the aggregate, of approximately .306 acres, as described in the attached Exhibit A and as shown on the attached map labeled Exhibit B.

TRUST LAND STATUS:

Section 5(B) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:  
YES \_\_\_\_ NO X

HISTORY OF LEASE

The State of Hawaii, through the Department of Transportation, as Lessor, entered into Lease no. H-83-2 with Kona U-Cart, Inc., as Lessee, after a public auction held on June 24, 1983. The lease commenced 60 days after the date of issuance (Sept. 28, 1984) of the building permit (i.e., on Nov. 27, 1984). The lease established a marine fueling facility at Honokohau Harbor near Kailua-Kona, on the island of Hawaii. The lease is for a term of 35 years and covers 13,300 square feet (.306 acre) of land area, of which 10,000 square feet (.230 acre) is fast land and 3,300 square feet (.076 acre) is submerged land. On Nov. 10, 1983, the lease was amended by consent, moving the same area of demised property approximately 30 feet south due to anticipated plans to widen the main harbor channel.

Kona U-Cart, Inc. changed its name to Kona Fuel & Marine, Inc. (KFM) on Sept. 13, 1984. On Oct. 10, 1986, the Board, consented to the retroactive amendment of the name of the Lessee in the lease, to reflect the change in Lessee's corporate name. In 1989, the leasehold property was acquired from KFM by James L.K. Dahlberg and Diane Dahlberg with funding from a first mortgage from HonFed (now Bank of America – BoA), with KFM taking a second mortgage through Lenders Document Service, Inc. (Lenders).

In 1993, the Dahlborgs fell into arrears with the State. Lenders filed for foreclosure and was joined by BoA. While Lenders negotiated with BoA to acquire the first mortgage, Lenders entered into an agreement with Island Petroleum, Inc. to loan funds to Lenders to pay off BoA. Meanwhile, KFM was involuntarily dissolved on Nov. 15, 1993. Instead of Lenders acquiring the lease, a different corporate entity with the same name as the prior dissolved entity, Kona Fuel & Marine, Inc. ("Kona Fuel" incorporated on Dec. 13, 1994), was assigned the Dahlborgs' lease interest in lieu of foreclosure, on Dec. 28, 1994. The

assignment was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-080406. The State of Hawaii consented to the assignment of the Lease to Kona Fuel by the consent dated Nov. 7, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-080407.

On a letter dated Sept. 22, 1997, "Kona Fuel" requested that the State consent to a promissory note and first mortgage to Island Petroleum, Inc., recognizing and retiring Lenders' interest owed to Island Petroleum, Inc. On Feb. 10, 2000, Bank of America, N.A. made a \$2,225,000 loan to Kona Fuel (the "BoA Loan"), which is secured by a Real Property Mortgage; Security Agreement; Assignment of Rents; and Financing Statement recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-026239. The Mortgage encumbers Kona Fuel's interest in Lease No. H-83-2. The State later executed a Consent to Real Property Mortgage; Security Agreement; Assignment of Rents; and Financing Statement of Harbor Lease H-83-2.

On November 30, 2005, Gulfstream Capital Corporation ("Gulfstream"), a Delaware corporation, was assigned the 2000 mortgage from BoA. First State Bancshares, Inc. holds an 80% participating interest in the BoA Loan.

Kona Fuel is in arrears on loan payments under the BoA Loan and has permitted the condition of the property to deteriorate. The small vessel floating dock is partially submerged, and due to its condition, these vessels will tend to refuel at land-based gas stations as well purchasing supplies elsewhere.

The lease is also currently in payment default with over \$35,696.31 back rent payable. From October of 2008, the principal balance of the Loan was approximately \$1,834,860. Gulfstream informed staff that Kona Fuel will execute a settlement agreement assigning Harbor Lease H-83-2 to Gulfstream in lieu of foreclosure. Gulfstream has formed a special entity, Kona Marine Holdings, LLC, to operate the harbor lease, subject to all subleases and the current fueling agreement, if this consent is approved. All defaults under the lease will need to be cured before DLNR will deliver for recordation the executed Consent to Mortgage, Consent to the Assignment, and the Amendment of Lease Extension.

#### CHARACTER OF USE:

Marine fueling and servicing facility purposes as well as other related or commercial uses.

#### TERM OF LEASE:

Original term of 35 years, commencing on November 27, 1984 and expiring on November 26, 2019.

Requested extension of 20 years, commencing on November 27, 2019 and expiring on November 26, 2039.

ANNUAL RENTAL:

\$12,750 per annum or 5% of annual gross receipts, whichever is greater.

RENTAL REOPENINGS:

Rental reopenings in the original term were scheduled at the end of the 5<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, and 30<sup>th</sup> years of the term, with November 27, 2009 and November 27, 2014 currently remaining. If approved, reopenings for the extended term will continue on the same five year schedule, reopening on November 27, 2019; November 27, 2024; November 27, 2029 and November 27, 2034.

CONSIDERATION:

The transfer is part of a structured loan work-out in lieu of foreclosure of the current existing mortgage of the leasehold interest. No additional consideration is being paid by the Assignee.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

USE OF LOAN PROCEEDS

Loan proceeds will be used for acquisition costs (i.e., a portion of the sums outstanding on the existing loan) and to renovate the existing improvements pursuant to plans to be approved by DLNR.

Use of funds as follows:

Acquisition costs (equal to a portion of the outstanding balance of existing loan which exceeds \$2 Million):	\$1,600,000.00
Renovations	\$400,000.00 (approx)

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>  x  </u>	NO <u>      </u>
Registered business name confirmed:	YES <u>  x  </u>	NO <u>      </u>
Good standing confirmed:	YES <u>  x  </u>	NO <u>      </u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>  x  </u>	NO <u>      </u>
Registered business name confirmed:	YES <u>  x  </u>	NO <u>      </u>
Good standing confirmed:	YES <u>  x  </u>	NO <u>      </u>

REMARKS:

Honokohau Harbor is important to the economy of the Island of Hawaii, as it is used both by local residents and by tourists. The fueling facility is a necessary feature to efficient use of the Harbor. Given both the present economy and the facility's history of struggling financially, it would be difficult and time-consuming to locate a new tenant willing to both take over the existing facility and to make the requisite repairs and upgrades.

Improvements to the property include a two (2) story building with 7,490 square feet of net leasable area, a dock facility for boat fueling and a land fueling facility. The property also includes five underground fuel tanks (four 4,000 gallon and one 8,000 gallon), and three boat fueling dispensers with multiple pumps for vehicles. A concrete dock runs along the western boundary with stairs leading from the dock to the land. Initially, the dock ran only alongside the leased area, but shortly after the main improvements were built, the dock was extended beyond the leased area, apparently for safety reasons (concerns that it was hazardous to leave rocks exposed for the 50 feet from the leased area to the end of the channel and concerns regarding the need for control of the use of and flow of traffic within the vicinity of the fueling operations). The lessee wishes to pursue a Revocable Permit in the future to maintain this area. At this time the dock area is being utilized by the State for mooring.

Over the course of time, a Fuel Purchase Agreement and various subleases were entered into by Kona Fuel and were submitted to the State for approval in accordance with the terms of the Lease; there are eight subleases, seven of which have had previous consent, and one requiring approval, further processing and review of all subleases is continuing.

Subject to certain conditions, (e.g., including the receipt of the consents, lease extension and estoppel certificate), Kona Fuel and Gulfstream have negotiated a settlement whereby, in lieu of foreclosure, Kona Fuel will assign the Lease to Gulfstream's designee, Kona Marine Holdings, LLC. First State Bancshares, Inc. will loan to Kona Marine Holdings, LLC the funds necessary to acquire the property (i.e., to pay off a portion of the existing loan debt) and to make the necessary repairs and renovations to the property. It is anticipated that the repairs and renovations will be completed within 18 months after the assignment, subject to permitting and other such timing factors not within the control of Kona Marine Holdings, LLC. However, the settlement and loan are conditioned on: (a) the written consent of the State to the assignment of the Lease; (b) an extension of the term of the Lease from 35 years to 55 years; and (c) an estoppel certificate from the State.

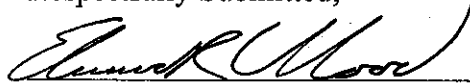
Kona Marine Holdings, LLC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. Further, Kona Marine Holdings, LLC has already conditionally obtained the requisite financing to resolve the impending foreclosure of the leasehold estate and to make needed improvements to the property.

RECOMMENDATION:

That, subject to all defaults under the lease being cured, the Board consent to the assignment of General Lease No. H-83-2 from Kona Fuel and Marine, Inc., as Assignor, to Kona Marine Holdings, LLC, as Assignee, consent to the Amendment for Extension of Lease Term, and consent to the Mortgage to First State Bancshares, Inc., subject to the following:

1. The standard terms and conditions of the most current consent to assignment and consent to mortgage forms, as may be amended from time to time;
2. All rental default must be cured at the time of assignment;
3. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
4. Review and approval by the Department of the Attorney General; and
5. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,

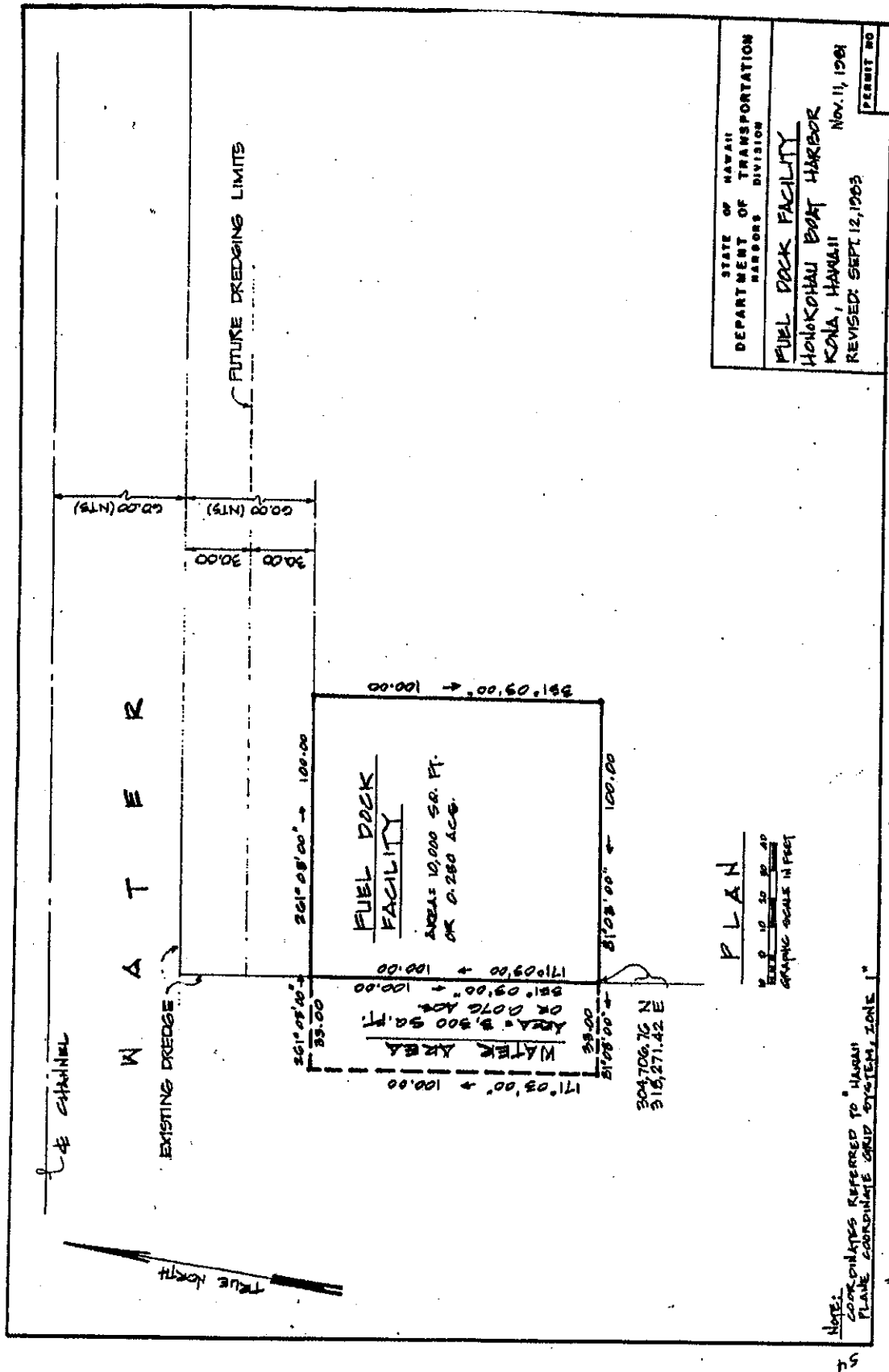


Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson

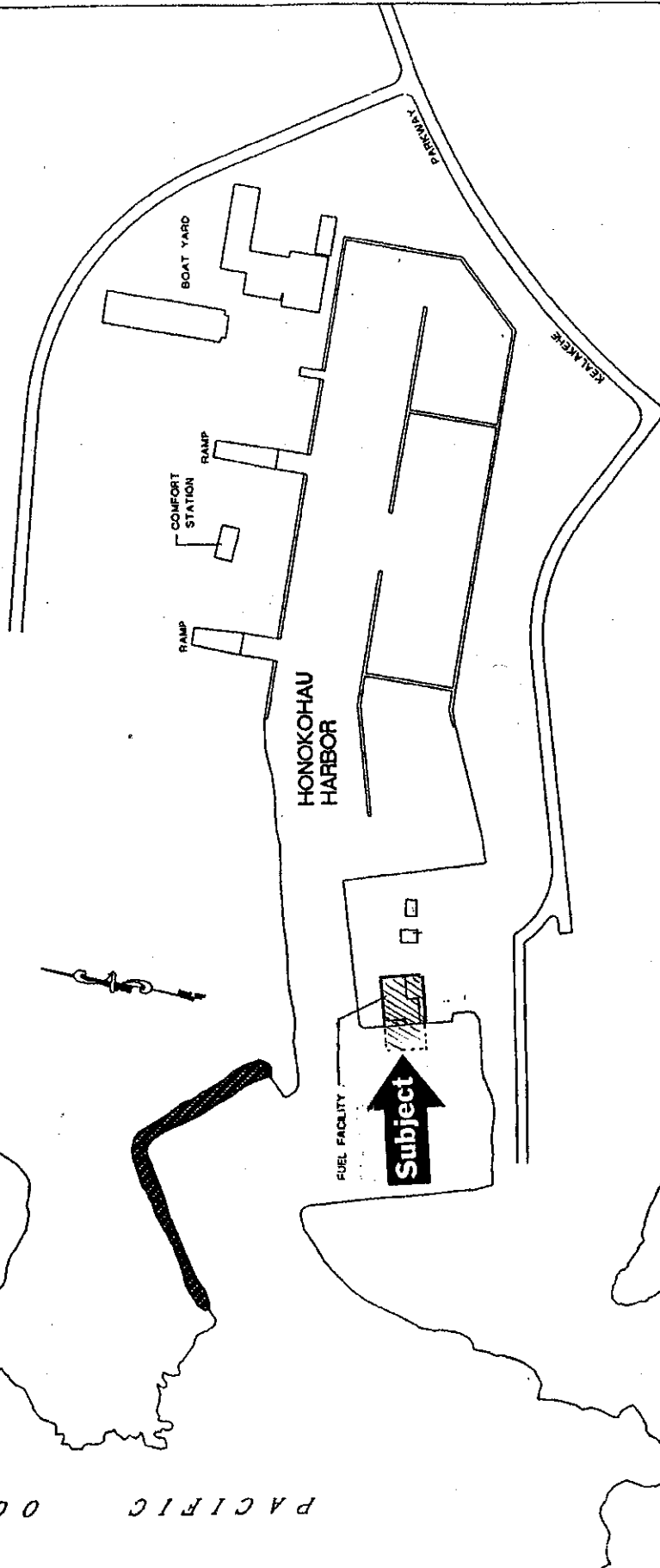


# HONOKOHAU SBH

DATE OF PHOTO: OCTOBER 13, 1991  
TAX MAP KEY: 7-4-B



PACIFIC OCEAN



PROJECT:	DOCUMENTATION OF FACILITIES FOR BOATING PROGRAM TRANSFER TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES
FOR:	STATE OF HAWAII DEPARTMENT OF TRANSPORTATION MARINE DIVISION
SHEET TITLE:	HONOKOHAU SBH ISLAND OF HAWAII
BY:	RMTC R. M. TONILL CORPORATION 1000 Kalia Road, Suite 111 Honolulu, HI 96817-1111 August 1992